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Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Application of

**MCI COMMUNICATIONS CORPORATION**

For Transfer of Control of Direct Broadcast  
Satellite Authorization to British  
Telecommunications plc

GN Docket No. 96-245

**PETITION TO DENY OR CONDITION GRANT**

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January 24, 1997

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## SUMMARY

PRIMESTAR PARTNERS L.P. ("PRIMESTAR ") hereby requests that the Commission condition MCI Communications Corporation's ("MCI's") Application for transfer of control of its Direct Broadcast Satellite ("DBS") license to British Telecommunications plc ("BT") on a demonstration of effective competitive opportunities in the home countries of all DBS service providers, *including any entities controlling the programming and information transmitted on the DBS system*, as well as the DBS licensee itself. On April 26, 1996, MCI and The News Corporation Ltd. ("News Corp"), an Australian company, announced that they had formed American Sky Broadcasting ("ASkyB"), a 50/50 joint venture, to provide the programming over a DBS system for which MCI had won the authorization to operate in the FCC's auction. On November 2, 1996, MCI and BT announced that BT would purchase the remaining portion of MCI that it did not already own. As a result of the proposed merger, the last available full-Conus DBS authorization allocated to the United States will be transferred to foreign control. The subject application for FCC approval of the transfer of control of MCI's DBS authorization to BT was filed December 2, 1996.

Equally disturbing to the issue of 100 percent foreign ownership of a U.S.-licensed DBS space station, is the fact that if the subject transfer of control of the DBS authorization is granted without condition, the selection of the programming provided to the U.S. public via this DBS system will be 100 percent foreign controlled. BT, a 100 percent foreign owned company, will not only become the licensee of the DBS system, but also will gain complete discretion to select the entity responsible for providing programming over the system. Unless grant of the subject transfer

of control application is appropriately conditioned to ensure U.S. access to the home countries of the DBS licensee and the DBS programmer, PRIMESTAR fears that the U.S. interest in opening all foreign communications markets to U.S. participants will be adversely affected. Therefore, the Commission must condition the MCI DBS authorization on a requirement of reciprocal opportunities in the home market of both the DBS licensee and the DBS programmer.

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**PETITION TO DENY OR CONDITION GRANT**

PRIMESTAR Partners L.P. ("PRIMESTAR"), by its attorneys, pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended (the "Act"),<sup>1</sup> hereby petitions the Commission to deny or condition its grant of the subject application for transfer of control of a Direct Broadcast Satellite ("DBS") authorization<sup>2</sup> from MCI Communications Corporation to British Telecommunications, plc ("BT"), a corporation chartered in the United Kingdom. Very simply, the public interest requires that the Commission condition the transfer of the subject DBS authorization on a demonstration of effective competitive opportunities in the home country of all DBS service providers, including any entities controlling the programming and information transmitted on the DBS system, as well as the DBS licensee itself. In support thereof, PRIMESTAR states as follows:

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<sup>1</sup> 47 U.S.C. § 309(d)(1).

<sup>2</sup> See file no. 73-SAT-P/L-96.

## INTRODUCTION

On January 25, 1996, MCI Telecommunications Corporation ("MCI") won the Commission's DBS auction for 28 channels at orbital location 110 degrees W.L. In its application filed subsequent to the auction, MCI stated that while it proposed to manage and control the DBS space station(s), a joint venture between MCI and The News Corporation Ltd. ("News Corp."), an Australian company,<sup>3</sup> would be responsible for the programming of services via the proposed DBS system.<sup>4</sup>

On November 2, 1996, prior to the grant of the DBS authorization, the boards of directors of MCI and BT voted to approve a merger of the two companies. Under the terms of the proposed merger, BT will acquire the remaining portion of MCI's stock that it does not currently own, thereby making MCI a wholly-owned subsidiary of a 100 percent foreign held company. Upon consummation of that transaction, the programming of the services via the licensed DBS system will be wholly under foreign control. On December 2, 1996, MCI and BT filed applications for Commission approval of the proposed merger and the transfer of control of all of MCI's FCC authorizations, including the subject DBS authorization. Despite the December 2, 1996 transfer of control application and its substantial amendment to MCI's DBS application reflected therein, the Chief, International Bureau, issued an Order on December 6, 1996 finding MCI's DBS application

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<sup>3</sup> See Fox Television Stations, Inc., 10 FCC Rcd 8452 (1995).

<sup>4</sup> MCI Telecommunications Corporation, File No. 73-SAT-P/L-96, Application for an Initial Construction and Launch Authorization in the Direct Broadcast Satellite Service ("MCI DBS Application") filed February 27, 1996 at 7.

ready for grant contingent on MCI making the final required payment.<sup>5</sup> MCI made its final payment and the DBS authorization was granted pursuant to another Order issued by the Chief, International Bureau, on December 20, 1996.<sup>6</sup>

As disclosed in MCI's DBS Application, MCI indicated that it was forming a joint venture with News Corp. to provide the DBS programming. On April 24, 1996, MCI and News Corp. announced the formation of two new programming ventures to provide video, audio, and data services via the MCI DBS system, American Sky Broadcasting ("ASkyB") and SkyMCI.<sup>7</sup> A third joint venture between MCI and News Corp. will contract with MCI to acquire all of the capacity available on MCI's DBS system. ASkyB and SkyMCI will use this capacity to provide DBS service to the American public.<sup>8</sup> The joint ventures will apparently exercise control over programming selection and market DBS services directly to U.S. viewers.<sup>9</sup>

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<sup>5</sup> MCI Telecommunications Corporation, DA 96-1793 (Released Dec. 6, 1996) ("*Grant Order*")

<sup>6</sup> MCI Telecommunications Corporation, DA 96-2165 (Released Dec. 20, 1996) ("*Authorization Order*")

<sup>7</sup> ASkyB plans to offer multi-channel video, while SkyMCI plans to use the satellites for information services.

<sup>8</sup> Telquest Ventures, L.L.C., File No. 758-DSE-P/L-96, Consolidated Petition to Deny of MCI Telecommunications Corporation and the News Corporation Limited ("*Consolidated Petition to Deny*") filed April 25, 1996 at 4.

<sup>9</sup> News Corp. is the managing partner and half-owner of ASkyB. MCI has recently stated that it intends to reduce its one-half interest to "something less than 20%." The reduction in MCI's ownership interest will further concentrate News Corp. control of ASkyB, even if additional partners join the venture. "MCI/British Telecom Reducing ASkyB Stake," Broadcasting & Cable, Nov. 11, 1996 at 54.

Notwithstanding the issue of 100 percent foreign ownership of a U.S.-licensed DBS space station for which scarce U.S. spectrum is allocated, particularly disturbing in this case is the fact that if MCI's transfer of control application to BT is granted, the selection of the programming provided to the U.S. public over this system will be 100 percent foreign controlled. BT will not only control the licensed DBS system, but also will be free to select the programming entity as well. Consequently, BT, the foreign-owned licensee, could assign the right to select and provide, as well as to distribute programming on the DBS system, to any entity from any country, irrespective of whether that entity's home country's satellite services and programming markets are open to U.S. interests. Unless grant of the instant transfer of control application is appropriately conditioned,<sup>10</sup> 100 percent of the programming service provided over that satellite could come from countries that do not similarly afford U.S. programmers the opportunity to access their markets. PRIMESTAR fears that U.S. interests will be adversely affected unless the Commission seizes this opportunity to further its policies aimed at opening all foreign communications markets to U.S. participants and appropriately conditions the transfer of MCI's DBS authorization to BT on a requirement of effective competitive opportunities not only for licensees, but programmers as well.

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<sup>10</sup> To ensure that the Commission's goal of opening foreign markets to entry by United States entities is continued in the future, it is appropriate to condition the transfer of control of the DBS authorization on not only the openness of the United Kingdom and Australian markets, but also on the competitive opportunities available to United States companies in the home markets of any subsequent DBS service providers.



## DISCUSSION

The U.S. goals of increasing competition in international communications markets requires that DBS authorizations be conditioned on a requirement that the home countries of all service providers, including program distributors, offer competitive opportunities to U.S. companies. In its *Foreign Carrier Market Entry Order*, the Commission set out three goals of its regulation of the U.S. international telecommunications market. These include:

- 1) to promote effective competition in the global market for communications services;
- 2) to prevent anticompetitive conduct in the provision of international services or facilities; and
- 3) to encourage foreign governments to open their communications markets.<sup>11</sup>

To ensure that these goals are met, the Commission adopted an Effective Competitive Opportunities ("ECO") test as part of its public interest analysis under Section 214 of its rules.<sup>12</sup>

The ECO test requires that if a foreign carrier seeks authority to enter the U.S. international facilities-based market either directly or through an affiliation or investment in an authorized U.S. carrier, the Commission will consider whether there is effective market access in the primary market of the foreign carrier seeking entry.<sup>13</sup> In short, the home market of the foreign carrier will

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<sup>11</sup> Market Entry and Regulation of Foreign-Affiliated Entities, *Report and Order*, 11 FCC Rcd 3873, 3877 (1995) ("*Foreign Carrier Market Entry Order*").

<sup>12</sup> Id. at 3875. The same test is applied in determining whether to permit foreign investment in licensees of common carrier radio facilities in excess of the Section 310(b)(4) benchmarks.

<sup>13</sup> Id. at 3882.

be examined to determine whether it offers U.S. carriers an equivalent opportunity to enter that market.

The Commission is currently considering the implementation of a similar test, "ECO-Sat," for evaluating applications for authority to access satellites licensed by other countries to transmit into the U.S.<sup>14</sup> Under the Commission's proposed ECO-Sat test, a satellite system that is not licensed by the U.S. would be allowed to provide services to and from the U.S. to the extent that its home and route markets allow effective competitive opportunities for U.S. satellite service providers to offer analogous services.<sup>15</sup>

In their pleadings to deny the applications of Telquest Ventures, L.L.C. ("Telquest") and Western Tele-Communications, Inc. ("WTCI") to use DBS satellites to be located in orbital slots assigned to Canada to provide DBS service to the U.S.,<sup>16</sup> MCI and News Corp. went to great lengths to demonstrate that an ECO-like test should apply to the evaluation of applications for U.S. programmers to use non-U.S.-licensed satellites to provide service to the U.S.<sup>17</sup> By the same reasoning, an ECO-like test must apply to the ability of non-U.S. programmers to use U.S.-licensed

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<sup>14</sup> See In the Matter of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, Notice of Proposed Rulemaking, IB Docket No. 96-111, FCC 96-210 (Released May 14, 1996) ("*DISCO II*").

<sup>15</sup> Id. at 1-2.

<sup>16</sup> See Application of Telquest Ventures, L.L.C., File Nos. 758-DSE-P/L-96 and 759-DSE-L-96; Application of Western Tel-Communications, Inc., File No. 844-DSE-P/L-96.

<sup>17</sup> See Consolidated Petition to Deny, *supra* at 14-22; Telquest Ventures, L.L.C., File No. 748-DSE-P/L-96, Reply of MCI Telecommunications Corporation and the News Corporation Limited ("MCI/News Corp. Reply") filed May 13, 1996 at 2-7.

satellites, particularly U.S.-licensed satellites that are 100 percent foreign owned, to provide service to the U.S.

In their Consolidated Petition to Deny in that proceeding, MCI and News Corp. argued that an ECO-like test should be applied in determining whether foreign satellites may be used to transmit programming to the U.S.:

TelQuest's and WTCI's proposed use of Canadian satellites to deliver U.S. programming to U.S. households implicates the issue of reciprocity vis-a-vis the Canadian and United States video programming and distribution markets. The gross inequities that would result from grant of the applications are illustrated by reference to the ECO test for entry into the U.S. market by foreign common carriers. Under this test, the Commission requires a level of open entry into foreign markets before it will permit foreign entities to operate in the United States. The Commission recognized that limits on U.S. participation in foreign markets threaten some or all of the desired public interest benefits of foreign entry into the U.S. market. The fact is the Canadian law and policy effectively prohibit competition in Canada by U.S. firms in either the satellite services or video program services market segments.<sup>18</sup>

MCI and News Corp. argued that "Canadian statutory and regulatory laws contain very strict requirements as to the nature and amount of 'foreign' programming that may be provided within Canada, and also as to who may provide the material that is permitted."<sup>19</sup> As such, they concluded, Canada cannot meet an ECO-like test. In their Reply Comments in the same proceeding, MCI and News Corp. re-emphasized that the fact that the Canadian video programming market is closed to

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<sup>18</sup> Consolidated Petition to Deny, *supra* at 18-19 (emphasis added).

<sup>19</sup> Consolidated Petition to Deny, *supra* at 15.

U.S. direct-to-home programmers requires the denial of Telquest's application on reciprocity grounds.<sup>20</sup>

The importance of reviewing equivalent competitive opportunities in the transfer of MCI's DBS authorization to a foreign entity is further demonstrated by a letter sent from the Office of the U.S. Trade Representative on behalf of itself, the Department of Commerce, and the Department of State in which the Executive Branch specifically request that, in connection with MCI's initial DBS application, the Commission expressly preserve its ability to make recommendations on matters of trade and investment policy, foreign policy, or national security. In particular, the Executive Branch requested that it be allowed to make recommendations to the Commission on the appropriate criteria for reviewing such transfers or assignments, particularly those involving foreign entities.<sup>21</sup>

The proposed ECO-Sat test would apply only to U.S. earth station applications involving transmissions to, from, or within the U.S. via a non-U.S. space station. However, the national interest of encouraging the opening of foreign markets to U.S. telecommunications and programming providers demands that a comparable ECO-Sat-type test be applied also to transmission to, from, or within the U.S. via a foreign controlled U.S.-licensed space station, as well as to proposals to allow foreign-controlled programming entities to select the programming

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<sup>20</sup> MCI/News Corp. Reply, *supra* at 2-7.

<sup>21</sup> Letter from Jeffrey M. Lang, Deputy U.S. Trade Representative, Office of the U.S. Trade Representative; Hon. Larry Irving, Assistant Secretary for Communications and Information, Department of Commerce; and Ambassador Vonya B. McCann, U.S. Coordinator, International Communications and Information Policy, Department of State, to Reed E. Hundt, Chairman, Federal Communications Commission, dated November 27, 1996. A copy has been attached as Exhibit 1 hereto.

and information to be transmitted to U.S. consumers over U.S.-licensed satellites. Application of such an ECO-Sat-type open markets test is especially critical where, as here, the satellite licensee itself is foreign-owned and controlled.

The Commission has already recognized that the delegation of programming responsibilities to an entity other than the licensee raises concerns about the ultimate responsibility for ensuring compliance with Section 335 of the Communications Act, which was added to the Act by the 1992 Cable Act.<sup>22</sup> This section requires the Commission to impose programming obligations on DBS service providers. In its *Notice of Proposed Rulemaking* in MM Dkt. No. 93-25 to implement Section 335 of the Act, the Commission requested:

information on the division of functions and duties and the typical contractual and practical relationships that occur or are developing among the various entities involved in the delivery of programming in the Part 100 DBS service. Commenters should also address how the practical aspects of program delivery in this service should affect our treatment of the responsibilities imposed by Section 25 consistent with the 1992 Cable Act.<sup>23</sup>

Obviously, the Commission would not have sought comment on the relationship between DBS licensees and programmers unless it were relevant to regulation of DBS service providers as well as licensees. Section 335 of the Act is provides:

The Commission shall within 180 days after the date of enactment of this section, initiate a rulemaking proceeding to impose on providers

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<sup>22</sup> Cable Television Consumer Protection and Competition Act of 1992, Publ. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>23</sup> Implementation of Section 25 of the Cable Television Consumer Protection And Competition Act of 1992, *Notice of Proposed Rulemaking*, 8 FCC Rcd 1589, 1590-1591 (1993).

of direct broadcast satellite service, public interest or other requirement for providing video programming.<sup>24</sup>

Included is a specific requirement that providers of video programming over DBS satellites reserve exclusively for noncommercial programming of an educational or informational nature a portion of their channel capacity, equal to or not less than 4 percent nor more than 7 percent.<sup>25</sup> Unquestionably, the Act authorizes the Commission to regulate DBS programmers in addition to DBS licensees. The legislative history of Section 335 further demonstrates that the regulation of DBS service providers applies to the "person that uses the facilities of a direct broadcast satellite system to provide point-to-multipoint video programming for direct reception by consumers in their homes."<sup>26</sup>

An ECO-like condition on DBS authorizations is also appropriate because it addresses the concerns of foreign ownership of a U.S.-licensed service on which certain broadcast requirements are imposed. In its *DBS Grant Order*, the International Bureau concluded that Section 310(b) of the Act does not apply to MCI's DBS application because that statutory provision is expressly applicable only to broadcast, common carrier, aeronautical en route and aeronautical fixed licenses.<sup>27</sup> PRIMESTAR addressed the inadequacies of the Bureau's reasoning in its Application for Review of the DBS Grant Order filed January 6, 1997, and will not be repetitious here.<sup>28</sup>

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<sup>24</sup> 47 U.S.C. § 335(a)(emphasis added).

<sup>25</sup> 47 U.S.C. § 335(b)(1).

<sup>26</sup> H.R. Rep. No. 628, 102d Cong., 2d Sess. 124 (1992).

<sup>27</sup> *DBS Grant Order*, *supra* at § 21.

<sup>28</sup> See MCI Telecommunications Corporation, File No. 73-SAT-P/L-96, Application for Review filed by PRIMESTAR Partners L.P. on January 6, 1997.

However, the Commission must recognize that DBS service does have characteristics of broadcast service that require the application of foreign ownership restrictions, as necessary to ensure open markets to U.S. service providers, including programming service providers.

As aforementioned, Section 335 of the Act requires the Commission to impose on providers of DBS service video programming obligations that must include:

- 1) Political programming requirements set forth in Sections 312(a)(7) and 315 of the Act;
- 2) Reservation and availability of channels for noncommercial educational and informational programming at reasonable rates; and
- 3) Service to local communities.<sup>29</sup>

Recently, the Commission has recognized that DBS operators are like other multichannel video programming distributors in that they: downlink programming from many different satellites pursuant to contracts with programmers, package the programming into service offerings, and make those service offerings available to subscribers over a proprietary facility.<sup>30</sup> The only difference is that DBS services use satellites instead of broadband wires or terrestrial microwave stations to transmit their programming to subscribers. The concern of foreign ownership of DBS programming is also shown in a letter from four members of Congress to the Commission's Chairman in which the Senators, *inter alia*, question:

Why would policies relevant to foreign ownership with respect to broadcast services not be relevant to a subscription DBS service,

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<sup>29</sup> See 8 FCC Rcd 1589, *supra*.

<sup>30</sup> Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Third Annual Report, CS Dkt. No. 96-133, ¶ 36 (Released Jan. 2, 1997)

particularly one, such as that proposed by MCI, that serves the entire continental United States?<sup>31</sup>

Surely the Commission would not grant a DBS application if a Cuban-controlled entity was going to provide the programming on the system. However, unless the Commission conditions the subject DBS authorization, there is nothing to prevent any foreign entity from subsequently gaining control of a system that serves the entire continental U.S. While an ECO-like requirement on the home country of the DBS programmer will not guarantee that the home country is not hostile towards the U.S., inclusion of an ECO-Sat-type open markets standard would ensure that U.S. programmers have access to those countries' markets, irrespective of those countries' politics or their relations with the U.S.

In short, if the space station is controlled by a foreign entity, it makes absolutely no difference to those controlling the programming whether or not it is a U.S.-licensed facility for purposes of determining whether an ECO-Sat-type test should be applied. A foreign programming entity should not have access to the U.S. market if its home country does not allow U.S. companies reciprocal access. As demonstrated by the winning bid submitted by MCI, the spectrum that it will use to operate its DBS system is extremely valuable and the decision to transfer control of the license to foreign entities should not be taken lightly. In addition, the broadcast-like characteristics of DBS service require the Commission to impose foreign ownership restrictions. Therefore, the

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<sup>31</sup> Letter from the Hon. John D. Dingell, Ernest F. Hollings, Edward J. Markey, and Daniel K. Inouye to Reed E. Hundt, Chairman, Federal Communications Commission, dated December 19, 1996. A copy has been attached as Exhibit 2 hereto.



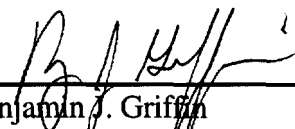
Commission must condition the MCI DBS authorization on a requirement of reciprocal opportunities in the home market of both the DBS licensee and the DBS programmer.

### **CONCLUSION**

WHEREFORE, PRIMESTAR respectfully requests that the Commission Deny MCI's application for transfer of control of its DBS authorization because MCI has failed to demonstrate that Australia, the home country of the DBS programmer News Corp., offers equivalent competitive opportunities for U.S. entities to provide programming and information in that country. Reciprocal access for DBS programming does not exist between the U.S. and Australia. Because reciprocity cannot be found between the U.S. and Australia, the MCI application must be denied. In the alternative, if the Commission does grant MCI's application, PRIMESTAR requests that the grant be conditioned on the requirement that Australia, as the home country of the proposed program distributor, and the home country of any subsequent program distributor, offer equivalent competitive opportunities for U.S. entities to provide satellite-delivered programming in that country.

Respectfully submitted,

**PRIMESTAR PARTNERS L.P.**



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Its Attorneys

January 24, 1997

## **EXHIBIT 1**

**Letter from Jeffrey M. Lang, Deputy U.S. Trade Representative, Office of the U.S. Trade Representative; Hon. Larry Irving, Assistant Secretary for Communications and Information, Department of Commerce; and Ambassador Vonya B. McCann, U.S. Coordinator, International Communications and Information Policy, Department of State, to Reed E. Hundt, Chairman, Federal Communications Commission, dated November 27, 1996.**

DEC 4 11 32 AM '96

United States of America  
Office of the U.S. Trade Representative  
Department of Commerce  
Department of State  
Washington, D.C.

November 27, 1996

Reed E. Hundt, Chairman  
Federal Communications Commission  
Washington, D.C. 20554

Re: Application of MCI Telecommunications Corp.  
For an Initial Construction and Launch  
Authorization in the Direct Broadcast  
Satellite Service  
File No. 73-SAT-P-96

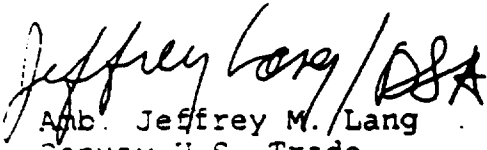
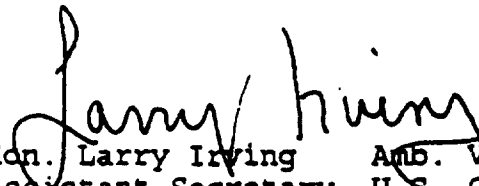
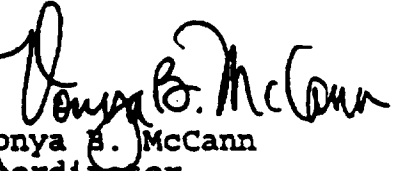
Dear Chairman Hundt:

We are writing in connection with the above-referenced application of MCI Telecommunications Corporation (MCI) for an initial construction and launch authorization in the direct broadcast satellite (DBS) service. We note that MCI announced recently its plans to merge with British Telecommunications.

With respect to any action that you may take on the pending DBS application, we hereby request that such action expressly preserve the ability of the Executive Branch to make recommendations to you on matters of trade and investment policy, foreign policy or national security in the event that MCI seeks to transfer control of any DBS licensee or assign any DBS license. In particular, any such action on the application should preserve the ability of the Executive Branch to make recommendations to the Commission on the appropriate criteria for

reviewing any such transfer or assignment, particularly if the transfer or assignment involves foreign entities, and notwithstanding the regulatory classification of the DBS licensee.

Sincerely,

		
Amb. Jeffrey M. Lang Deputy U.S. Trade Representative Office of the U.S. Trade Representative	Hon. Larry Irving Assistant Secretary for Communications and Information Dept. of Commerce	Amb. Vonya B. McCann U.S. Coordinator International Communications and Information Policy Dept. of State

cc: Donald Gips, Chief  
International Bureau

## **EXHIBIT 2**

**Letter from Hon. John D. Dingell, Edward J. Markey, Ernest F. Hollings and Daniel K. Inouye to Reed E. Hundt, Chairman, Federal Communications Commission, dated December 19, 1996.**

**Congress of the United States**  
**Washington, DC 20515**

December 19, 1996

The Honorable Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Dear Mr. Chairman:

We are writing with respect to the application of MCI Telecommunications Corp. for an initial construction and launch authorization in the Direct Broadcast Satellite Service (File No. 73-SAT-P-96). We have several questions concerning the decision by the staff (acting on delegated authority) to grant this application, and would request a response to this letter before the Commission takes any final action on this matter.

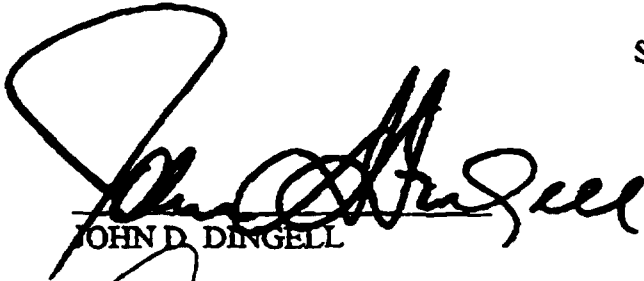
1. In what proceeding(s) did the Commission determine that a subscription DBS service could be regulated differently from all other broadcast services, and consequently regulated as a private service?
2. Why does a subscription service differ from other broadcast services?
3. Why would policies relevant to foreign ownership with respect to broadcast services not be relevant to a subscription DBS service, particularly one, such as that proposed by MCI, that serves the entire continental United States?
4. In what proceeding(s) did the FCC create a third regulatory category (private carrier), and how did it determine that Section 310(b) of the Communications Act (47 U.S.C. 310 (b)) which applies to common carrier and broadcast services, should not apply to private carrier service?
5. Why did the Commission decide to address now the question of whether Section 310(b) applies to MCI's DBS license, rather than grant a waiver and defer the larger question to a subsequent rulemaking?
6. Does the Commission's decision preserve the right of the Executive Branch to make recommendations to the Commission on the appropriate criteria for reviewing foreign transfers or

The Honorable Reed E. Hundt  
Page 2

assignments, regardless of their regulatory classifications, as requested by the Administration in its letter to the Commission dated November 27, 1996?

As we noted above, we would appreciate receiving your response to this letter before the Commission takes any final action on the referenced application. We look forward to your prompt reply.

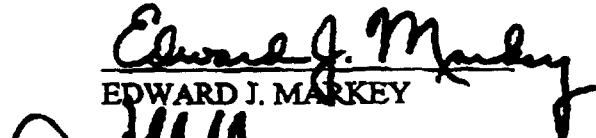
Sincerely,



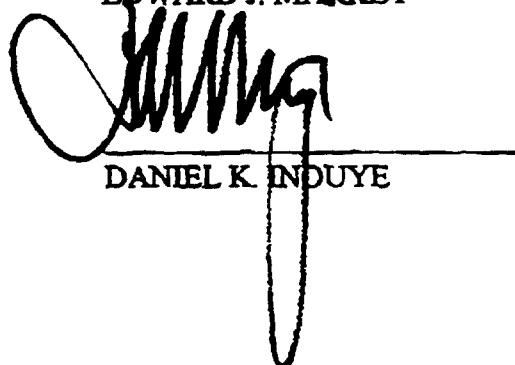
JOHN D. DINGELL



ERNEST F. HOLLINGS



EDWARD J. MARKEY



DANIEL K. INOUE

## CERTIFICATE OF SERVICE

I, Jette Ward, hereby certify that copies of the foregoing "**Petition To Deny or Condition Grant**" were served this 24th day of January, 1997, via first-class mail, postage prepaid, or hand delivery, upon the following:

Larry A. Blosser, Esq.  
MCI Telecommunications Corp.  
1801 Pennsylvania Avenue, N.W.  
Washington, DC 20006

Honorable Reed E. Hundt \*  
Chairman, Federal Communications  
Commission  
1919 M Street, N.W., Room 814  
Washington, D.C. 20554

Commissioner James H. Quello \*  
Federal Communications Commission  
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Commissioner Rachelle B. Chong \*  
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